U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32915563

Date: AUG. 23, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a physician, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not demonstrate that he meets at least of three of the ten evidentiary criteria set forth in the regulations and therefore did not satisfy the initial eligibility requirements for this classification.[1] The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[2]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter United States to continue working in the area of extraordinary ability; and their entry into the United States has substantial prospective benefits for the country.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a two-part analysis. First, a petitioner can demonstrate a one-time

[1] The Director initially denied the petition on March 20, 2023, and the Petitioner appealed that decision to our office. On August 30, 2023, we remanded the matter to the Director for further consideration and issuance of a new decision.
[2] We decline the Petitioner's request for oral argument. *See* 8 C.F.R. § 103.3(b)(2).

achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

II. ANALYSIS

The Petitioner is a board-certified gastroenterologist specializing in pancreatology, with 22 years of experience in medicine and medical research. He seeks to continue his work in this field in the United States.

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement. Accordingly, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi) by providing evidence that he has authored scholarly articles in *Gastroenterology* and other professional publications. The Director further concluded that the Petitioner demonstrated he has commanded a high salary in relation to others in his field and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ix). The record supports the Director's conclusion that the Petitioner satisfied these two criteria.

The Director also addressed the Petitioner's claim that he could satisfy the criteria related to his receipt of lesser nationally or internationally recognized awards or prizes, published materials about him and his work, and original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii) and (v). However, the Director concluded the Petitioner did not demonstrate that he meets any of these criteria. Because the Director determined the Petitioner satisfied only two of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), their decision did not include a final merits determination.

On appeal, the Petitioner asserts that the Director's discussion of the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) contains numerous errors of law and fact, including the same errors that previously resulted in our decision to remand this matter to the Director for entry of a new decision. The Petitioner does not address or contest the Director's conclusions that he did not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii). An issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, we will limit our discussion to the original contributions criterion.[3]

[3] The Petitioner has not claimed eligibility under the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iv), (vii), (viii), and (x).

In our prior remand decision, we observed that the Director's analysis of this criterion contained several errors. First, we noted that the first decision, issued on March 20, 2023, misstated the Petitioner's medical specialty and included a list of exhibits that did not correspond to the documents he provided. Second, we observed that the decision overlooked relevant evidence that the Petitioner did provide in support of this criterion. Finally, we determined that the Director applied an improper standard by concluding that the Petitioner failed to provide "extensive documentation" in support of the original contributions criterion, a requirement that is not stated in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner maintains that, although the Director issued a new request for evidence (RFE) on remand and a new decision, they "made no attempts to correct the record or consider the other recommendations made by the AAO." We agree with the Petitioner that the Director's new decision repeats certain errors. The first paragraph of the Director's discussion of the original contributions criterion appears to have been copied verbatim from the prior decision issued on March 20, 2023, and includes the same references to evidence that the Petitioner did not submit.[4] The decision also includes an observation that the record does not contain "extensive documentation" showing that the Petitioner's original contributions have been of major significance. However, in both the new RFE issued on remand and in the decision before us on appeal, the Director discussed the Petitioner's evidence and explained why it was deemed insufficient to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(v).

Accordingly, because the Director adequately explained the specific reasons for denial, we do not find it necessary to remand this matter to the Director for a second time and will instead address the Petitioner's eligibility under the original contributions criterion. For the reasons provided below, we conclude the Petitioner has not demonstrated that he meets this criterion.

In evaluating evidence submitted under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), we must determine whether a given petitioner's contributions are original and whether they are of major significance in the field. Relevant evidence may include published materials about the significance of the person's original work; testimonials, letters and affidavits about the person's original work; documentation that the original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the work or evidence of its commercial use. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (discussing the evaluation of initial evidence of extraordinary ability under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)). The evidence should demonstrate, for example, contributions that have been widely implemented in the field, have significantly impacted or influenced the field, or have otherwise risen to a level of major significance.

In his initial letter in support of the petition, the Petitioner stated that his research work in the field of pancreatology "was able to establish the benefit of early treatment with a new medicine for acutely ill pancreatic disease patients" noting that "until recently there was no definite treatment of this disease except for supportive care." The Petitioner indicated that his 2015 article published in *Gastroenterology* was recognized by the journal's editors as a significant contribution and that

[4] The Petitioner asserts on appeal that, based on the Director's statements, he believes the record of proceedings includes evidence submitted by another individual and that certain evidence he submitted may be missing. We have reviewed the record in its totality and confirm that no unrelated evidence has been erroneously incorporated into the record. Further, all supporting evidence referenced by the Petitioner in his supporting statements is accounted for in the record of proceedings.

"multiple other commentaries by experts lauded his achievement." Finally, he stated that "multiple national and international researchers have confirmed the significance" of this work, and that it has "led to a major change in the way we treat patients with acute pancreatitis early in the course of disease."

The Petitioner provided his publication and citation record from Google Scholar indicating that he had received 119 cumulative citations to his body of published work, which included 14 articles published in professional journals. The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Therefore, publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." Rather, the appropriate analysis is to determine whether a petitioner has shown that his research findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with the plain language of this criterion.

The evidence reflects that the Petitioner's most cited article was published in *Gastroenterology* in 2015. The article, titled [redacted] had been cited 58 at times as of February 2023, when the Petitioner filed the petition. The Petitioner also submitted evidence that two of his articles, published in 2012 and 2019, had been cited 22 and 19 times, respectively.

Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or other written work. While the number of citations will be considered in evaluating whether an individual publication has received recognition commensurate with a contribution of major significance in the field, it is the Petitioner's burden to articulate and establish the significance or relevance of the citations to his articles. Such significance may be shown, for example, by submitting evidence demonstrating that the citation count is unusually high in the field, or by demonstrating that the number of citations is comparable to that received by other articles the field views as majorly significant.

In support of his claim that his published work has been highly cited, the Petitioner provided an article titled "Global status of acute pancreatitis research in the last 20 years," which was published in *Medicine* in 2022. The Petitioner stated that this study reveals that "the number of citations to pancreatic studies (overall and per study) were many folds lower than studies focusing on the subjects relating to General medicine gastroenterology." He also asserted that by extrapolating this data and making "data adjustments," his citations "could have been 10 times higher if [his] area of primary interest was in General Gastroenterology." In addition, the Petitioner, citing his own research on the limited number of pancreatology specialists in the United States, emphasized that "since overall research studies in highly specialized fields are less common . . . the citation count stays low even if the work is of similar or (even) greater significance compared to more general subject studies." Based on these claims, he concluded that any perception that his work is not highly cited should be attributed to the lack of researchers with deep knowledge of the field.

In the RFE issued on remand, the Director acknowledged the Petitioner's assertion that the submitted *Medicine* study supports his claim that his own research, particularly his 2015 article in *Gastroenterology*, has been highly cited. However, the Director pointed to a statistic stated in the *Medicine* article, indicating that "for the 20-year time period studied, the average citation rate for the

United States was 27.71." The Director acknowledged that the cumulative number of citations received by the Petitioner's 2015 article was greater than this average but concluded that the evidence was insufficient to establish that this published work had been recognized as a medical or scientific contribution of major significance.

The Petitioner maintains that the Director overlooked the fact that the study published in *Medicine* included research conducted in the last 20 years. He contends that his *Gastroenterology* article "did not have enough years to make [the] comparison fair." He further asserts that "if the statistics are analyzed in depth and year by year citations after publication are examined, the citation count for my study is in the top 2 percentile."

We acknowledge the Petitioner's assertion that the average citation data provided in the *Medicine* article did not allow for a "fair" comparison with his own citation record. While this claim may be valid, it is the Petitioner's burden to provide probative evidence that will allow for a meaningful comparison if he seeks to rely on his citation record as evidence to support this criterion.

Here, the information contained in the *Medicine* study does not provide adequate support for the Petitioner's claim that the number of citations his 2015 *Gastroenterology* article received is "in the top 2 percentile" when compared to other research articles on acute pancreatitis published in 2015. He does not explain or document what statistics he "analyzed in depth" to reach this conclusion. Nor does the *Medicine* article provide support for the Petitioner's claim that his number of citations would ten times higher if he had published similarly significant work in a broader field of specialization. The stated purpose of the study of acute pancreatitis research published in *Medicine* was not to identify the most highly cited articles in this field based on their date of publication or to compare citation rates in this field to those in other fields of medical research. Rather, according to its authors, "[t]he study was conducted to determine the global status of [acute pancreatitis] research" with a geographic focus on a selected set of 20 countries.

Therefore, the Petitioner has not sufficiently supported his claim that the 58 citations his *Gastroenterology* article received between its publication in 2015 and the filing of this petition in 2023 are indicative of his research being recognized as a contribution of major significance in the field. Further, we note that highly cited publications alone are generally not sufficient under 8 C.F.R. § 204.5(h)(3)(v), absent evidence that they were of "major significance," as a citation history does not provide sufficient context to demonstrate the impact or importance of a given researcher's work in the field.

We also acknowledge that the Petitioner provided evidence that *Gastroenterology* is a highly ranked journal within this medical field based on its impact factor. A publication's high ranking or impact factor is reflective of the publication's overall citation rate. It does not demonstrate the influence of any individual researcher within the field. That context must be provided by other evidence in the record.

To establish the significance of citations to his research, the Petitioner also emphasized that "multiple national and international researchers have confirmed the significance" of his published work. In support of this claim, he provided a self-compiled list of 12 "selected recent research studies and articles where my original research was cited and significance of my work discussed," published

between 2016 and 2022. He did not, however, provide copies of the articles and we are therefore unable to review them or assess whether they support the Petitioner's claims. We agree with the Director's determination that the Petitioner's self-prepared list of claimed notable citations to his work does not demonstrate how other researchers in his field have recognized the major significance of his research in the pancreatology or gastroenterology field.

With respect to his 2015 article published in *Gastroenterology*, the record establishes that it was featured in the journal's editorial section, and that several other professional publications in the field published short articles that acknowledged the novelty of the Petitioner's pilot study, summarized the study's findings and noted the study's conclusion that the results "warranted further study in larger trials." This evidence recognizes the novelty of the Petitioner's research and the field's interest in the findings of his study at the time of the article's publication. However, without further context, this evidence alone does not demonstrate how the Petitioner's research findings have been widely implemented in the field or establish that his contribution has had an impact on further medical research or clinical practice at a level commensurate with "major significance."

As noted, the Petitioner stated at the time of filing that his research "led to a major change in the way we treat patients with acute pancreatitis early in the course of disease." While a medical research contribution with a demonstrated impact on clinical practice could qualify as an original contribution of major significance, the record here, including the evidence discussed above, does not corroborate the Petitioner's claim that his published research has resulted in a "major change" in patient treatment protocols. He has not provided examples of citations to his work that would support this assertion and the citation count alone is not an indicator that the Petitioner's work has resulted in the claimed impact in his field. The published articles highlighting the Petitioner's 2015 *Gastroenterology* article mention the possibility of further study of the efficacy of [redacted] for severe acute pancreatitis in larger trials; they do not conclude that the Petitioner's work had already resulted in a change in treatment protocols for patients with acute pancreatitis.

We note that detailed letters from experts in the field explaining the nature and significance of a person's contributions may provide valuable context for evaluating a claimed original contribution of major significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). Here, the Petitioner has opted to rely on his own assertions regarding the nature and significance of his contributions in his field, even after the Director acknowledged his assertions and advised that he should submit "independent objective evidence" that his contributions have significantly influenced his field, including, among other items, detailed letters from experts. We agree with the Director that the Petitioner's own assertions regarding the impact of his work do not carry the same evidentiary weight or provide the same valuable context for evaluating his contributions. While the submitted evidence reflects the field's interest in his work, the record lacks sufficient evidence to support his claim that his research has directly resulted in a "major change" in how physicians treat patients with acute pancreatitis, nor does it establish that his research contributions are otherwise recognized as having major significance in the field.

After reviewing the evidence submitted in support of this criterion, individually and collectively, we conclude the Petitioner has not demonstrated he has made original contributions of major significance in the field and has therefore not satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.